BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT DENIED BY CHELAN COUNTY TO CHARLES AND MARY ANN MCKEE, CHARLES and MARY ANN MCKEE, Appellants, v. CHELAN COUNTY, Respondent.	SHB No. 86-28 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a denial of a shoreline substantial development for a commercial river rafting launching facility on the Wenatchee River came on for hearing before the Shorelines Hearings Board; Lawrence J. Faulk, Chairman, presiding, Wick Dufford, Rodney M. Kerslake, and Shirley Van Zanten, members, on September 19, 1986, in Wenatchee, Washington. The proceedings were officially reported by Cathy S. Shoemaker of Steichen & Hewitt. The Board viewed the site the day of the hearing.

Appellants Charles and Mary Ann McKee represented themselves. Respondent Chelan County was represented by Prosecuting Attorney Gary Riesen.

Witnesses were sworn and testified. Exhibits were admitted and reviewed and oral argument was heard. From the testimony, evidence and arguments, the Board makes these

FINDINGS OF FACT

I

Appellants seek review from the Shorelines Hearings Board of the action of Chelan County in denying a shoreline substantial development permit.

On March 19, 1986, appellants Charles and Mary Ann McKee applied for the permit to use a portion of their riverfront property on the Wenatchee River as a launch site for commercial rafting operations.

On May 12, 1986, a public hearing was held. A final declaration of non-significance was issued by Chelan County on May 16, 1986. Chelan County denied the McKees' permit application. The appellants received the decision on May 21, 1986.

II

Feeling aggrieved by the County's decision, the appellants requested review by this Board on June 20, 1986. On June 30, 1986, the request for review was certified by the Department of Ecology. A pre-hearing conference was held on July 21, 1986, in Chelan.

III

The appellants McKee own a twenty-acre parcel on the south side of the Wenatchee River, devoted mainly to fruit growing and livestock raising. They maintain their home on the property.

In recent years the popularity of floating the river reach which includes McKee's farm has grown, and a number of entrepreneurs have gone into the business of conducting group float trips. The McKees seek permission to make available about 400 feet of their 2,300 feet of riverfront for a raft launching site to be used by such businesses.

From the proposed launch site it is at least 500 feet to the nearest neighbor's property. The site is about 1,200 feet from the nearest house. The immediate area is a grassy meadow.

The launching operations themselves would involve no changes to the riverbank. No trees would be removed, no dredging or filling would occur. Indeed the only physical change within 200 feet of the ordinary high water mark would involve some minor alterations in an existing farm shed near the put-in site. The plan is to make this shed usable as a place to change clothes. Exterior alteration of the structure is not contemplated.

The estimated total cost of activities under the proposal was estimated by appellants to be less than $100. The County presented no conflicting evidence.

IV

To get to the McKee's property, the rafters must use a narrow dirt lane, varying in width from 10 to 20 feet. From Sanders Road, the

nearest paved thoroughfare, this lane proceeds through the properties of two neighbors, passing two homes and orchards on either side, until it reaches the McKees. The neighbors oppose the raft launching proposal out of concern for the quiet enjoyment of their property, fear for the safety of their children and worry about interference with their orchard operations.

V

The McKees' proposal is not a construction project. It involves principally a change in the use of a small part of their property. But, even the changed use would be of modest scope. The rafters would leave their cars elsewhere and be brought to the launch site in groups of 10 to 30 by shuttle bus. The vast majority of activity would be between 8:00 a.m. and 1:00 p.m. on Saturdays and Sundays in May through mid-July. The McKees expect use to be limited to about 10 weekends a year. Five or six bus trips a weekend would be the likely maximum--perhaps involving the movement of 150 people past the neighboring properties in the two days. Signs warning of the presence of children would be posted. Gravel would be placed on the road surface to suppress dust.

VI

At the launch site each rafting group would remain only a short time, thirty minutes at most. The proposal would enhance shoreline access and water use. No interference with normal public use of the water or shorelines would be involved.

VII

The substantial development permit process was combined by the County with the consideration of a conditional use permit under the zoning code. The County's ultimate decision was to deny both.

VIII

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board comes to these

CONCLUSIONS OF LAW

I

The Shoreline Management Act (SMA), chapter 90.58 RCW, prohibits the undertaking of a "substantial development" without first obtaining a permit. Issuance of a permit for such a development is dependent on the issuing entity's finding that the proposal is consistent with the SMA and the local shoreline master program. RCW 90.58.140(2)

II

The SMA defines a "development" in RCW 90.58.030(3)(d), as follows:

> "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping, filing; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.

III

At the time the McKee's application was acted upon, the SMA definition of "substantial development," set forth in RCW

90.58.030(3)(e) was, in pertinent part, as follows:

> "Substantial development shall mean any development of which the total cost or fair market value exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state...[1]

IV

On the record before us we conclude that the proposal does not involve "development," as statutorily defined, within the 200-foot shoreline area. See RCW 90.58.030(2)(d), (f).

V

Appellant's cost estimate places project expenditures below the $1,000 statutory minimum for a "substantial development." Such estimate was unrebutted.

Accordingly, we conclude that the proposal, even were it to involve "development," does not reach the threshold of "substantial development" as statutorily defined.

VI

The County's position is that the change in character of property use represented by raft launching brings the proposal within the substantial development permit requirement. We do not think the statutory definitions support this interpretation.

Therefore, we hold that the County's actions in this matter must be reversed on the basis that no substantial development permit is required under the SMA for the proposal made by the McKees.

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1. This definition has been amended by the legislature to raise the monetary minimum to $2,500. Chapter 292, Laws of 1986.

VII

Where exemption from the permit requirements of the act is initially determined by the local government, the issue does not reach this Board. See Toandos Peninsula Ass'n v. Jefferson County, 32 Wn. App. 473, 648 P. 2d 448 (1982). Our jurisdiction is limited to review of "the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140." RCW 90.58.180(1). However, where, as here, an appeal within our jurisdiction is lodged with us, we can and have decided issues of statutory coverage. See Putnam v. Carroll, 13 Wn. App. 201, 534 P. 2d 132 (1975).

VIII

In deciding as we do, we make no comment on the County's ruling on the zoning issue presented by the McKees' project. Neither do we rule on whether the proposal is consistent with any substantive requirements of the SMA or local master program which may apply. See RCW 90.58.100. To do so would involve us in difficult issues concerning the reach of the SMA into uplands adjacent to the shorelines--issues not adequately presented or briefed on this record. See Weyerhaeuser v. King County, 91 Wn. 2d 721, 592 P. 2d 1108 (1979). Such matters should be addressed in connection with the exercise of County enforcement discretion.

IX

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER

The action taken by Chelan County in this matter is reversed.

DATED this 29th day of October, 1986.

SHORELINES HEARINGS BOARD

11/3/86

LAWRENCE J. FAULK, Chairman

WICK DUFFORD, Lawyer Member

RODNEY M. KERSLAKE, Member

SHIRLEY VAN ZANTEN, Member